



15 OCT 2007

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In re Application of	:	
RÖLLIN, Richard	:	
Application No.: 10/587,290	:	DECISION ON
PCT No.: PCT/CH2005/000024	:	
Int. Filing Date: 18 January 2005	:	PETITION UNDER
Priority Date: 27 January 2004	:	
Attorney Docket No.: 07-2533	:	37 CFR 1.47(b)
For: BREAST CAP PART AND BREAST CAP	:	
FOR USING THE BREAST CAP PART	:	

This is a decision on applicant's Petition Under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 12 April 2007. The application has only one inventor and that inventor has not signed. For this reason, this petition is being treated a petition under 37 CFR 1.47(b).

#### **BACKGROUND**

On 18 January 2005, applicant filed international application PCT/CH2005/00002, claiming a priority date of 27 January 2004. A copy of the international application was transmitted to the Office on 04 August 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 27 July 2006.

On 25 July 2006, applicant filed a submission for entry into the national stage in the United States which was accompanied by the basic national fee.

On 28 March 2007, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 12 April 2007, applicant submitted a petition under 37 CFR 1.47(b).

#### **DISCUSSION**

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Items (1) and (3) have been satisfied. Although applicants indicate that the petition fee accompanied the petition, it is not reflected in the fee records for this application. The \$200 petition fee will be charged to deposit account no. 50-0930. as authorized. Applicant states the last known mailing address of Mr. Richard Röllin as Sonnenberg 16, 6313 Menzingen, Switzerland.

Items (2) has not been satisfied. Applicant must show that the inventor has refused to sign the declaration. Ordinarily, the inventor must be presented with a complete copy of the application papers and then fail to sign the declaration. Applicant's petition is not accompanied by a detailed account of the presentation by someone with first hand knowledge of the presentation. Mr. Tanner's statement is general, does not indicate that he has firsthand knowledge of presentation of the application papers to Mr. Röllin and does not indicate which papers were forwarded. Copies of documentary evidence such as return mail receipts and copies of the documents forwarded to Mr. Röllin are appropriate.

Item (4) has not been satisfied. Applicant has not provided a declaration in compliance with 37 CFR 1.497(a)-(b) executed by the 37 CFR 1.47(b) applicant.

Item (5) has not been satisfied. Applicant has not provided a showing of sufficient proprietary interest in the application.

Item (6) has not been satisfied. Although applicant need only make the assertion that applicant is the assignee and failure to accept this petition would lead to the abandonment of the application, thus prejudicing applicant's rights, applicant has not done so.

### CONCLUSION

For the above reasons, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)". No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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